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Mar 20 2 05 PM '02

CLERK U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIF.
AT FRESNOBY DEPUTYUNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIASAN LUIS & DELTA-MENDOTA WATER
AUTHORITY; WESTLANDS WATER
DISTRICT,

Plaintiffs,

PIXLEY IRRIGATION DISTRICT, et
al.,Plaintiffs-in-
Intervention

v.

UNITED STATES OF AMERICA, et
al.,

Defendants.

SAVE THE SAN FRANCISCO BAY
ASSOCIATION, et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF THE
INTERIOR, et al.,

Defendants.

CIV F 97-6140 OWW DLB
CIV F 98-5261 OWW SMSFINAL PARTIAL JUDGMENT ON
ACCOUNTING ISSUES

Three decisions on injunctive relief and summary judgment

1 motions have been made and entered deciding accounting issues¹ on
2 which final judgment can be entered under Federal Rule of Civil
3 Procedure 54(b) in these consolidated cases. There is no just
4 reason for delay. The March 13, 2000 Memorandum and Order Re:
5 Inclusion of the Modified D-1400 Flows in the CVPIA Definition of
6 'CVPIA Yield' and Interior's Discretion as to Interpretation and
7 Implementation of CVPIA § 3406(b)(2), Motions Re: Preliminary
8 Injunction; the October 19, 2001 Memorandum Decision and Order
9 Re: Cross Motions for Summary Judgment; and the February 5, 2002
0 Supplemental Memorandum Decision and Order Re: Summary Judgment
1 Motion on Offset/Reset have resolved the following accounting
2 issues raised in the environmental plaintiffs'² second claim; San
3 Luis and Delta-Mendota Authority's first, second, and third
4 claims; Pixley Irrigation District's first and second claims; and
5 Stockton East Water District's first and second claims:

6 a. Interior's interpretation of the definition of CVP yield
7 is not arbitrary or capricious except for the deduction of the
8 modified D-1400 flows, to be replaced by D-893 flows, in
9 calculating CVP yield;

0 b. Interior did not act arbitrarily or capriciously in
1

2 ¹By the decision of February 20, 2002, p. 11, the court
3 determined the accounting claims presented by the two lawsuits
4 are legally and factually severable from the remaining claims and
5 should be tried first and decided.

6 ²The group "environmental plaintiffs" is comprised of: the
7 Bay Institute of San Francisco; the Pacific Coast Federation of
8 Fishermen's Associations; the Institute for Fisheries Resources;
9 Save San Francisco Bay Association; and the United Anglers of
0 California.

modeling the proposed 1999 (b)(2) actions on 1999 hydrologic conditions;

c. Interior cannot be required to use a comparative 1928-34 period analysis to annually measure the separate impact of each (b)(2) action for (b)(2) purposes in quantifying CVP yield;

d. No evidence establishes that Interior's recalculation of CVP yield using D-893 flows, submitted on March 17, 2000 violates the CVPIA;

e. Interior's decision to credit a maximum 450,000 AF of water that is used to satisfy Water Quality Control Plan and post-CVPIA-enactment Endangered Species Act requirements against (b)(2)'s 800,000 AF mandate is not provided for by statute, is arbitrary, and violates (b)(2);

f. The Final Decision's treatment of (b)(2) banking is not arbitrary, capricious, or unlawful;

g. The reasonable re-use of former (b)(2) water after a (b)(2) use, for non-(b)(2) purposes is not unlawful, arbitrary, or capricious;

h. The use of reset is unlawful, arbitrary, and capricious; as it fails to account for all annual (b)(2) use of CVP yield and resulted in more than 800,000 AF being used for (b)(2) purposes in the 1999-2000 water year;

i. Offset as implemented in water year 1999-2000 is unlawful, arbitrary, and capricious, as it failed to count all CVP yield actually used for (b)(2) purposes and contributed to the overall use of more than 800,000 AF of CVP yield for (b)(2) purposes; and

j. The Decision on Implementation of Section 3406(b)(2) of

the Central Valley Improvement Act, as implemented in water years 1999-2000 and 2000-2001, is remanded to the Department of the Interior for further action in conformity with the Memorandum Decisions and Orders.

The October 19, 2001 Memorandum Decision and Order Re: Motions to Sever Claims; to Enter Final Judgment; and to Certify for Interlocutory Appeal held:

a. These accounting issues are severable;

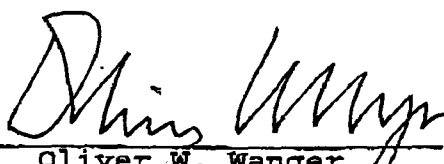
b. Entry of final judgment is appropriate as to the accounting claims, no just reason for delay exists; and

c. The accounting methods utilized in the actions taken by the Secretary on accounting issues are so consequential to the annual allocation and use of the limited annual CVP yield they meet the Rule 54(b) requirements to enter a partial final judgment from which an appeal can be taken.

Based on the March 13, 2000 order, both October 19, 2001 orders, and the February 5, 2002 order;

IT IS ORDERED, FINAL JUDGMENT is entered on the accounting claims raised in the environmental plaintiffs' second claim; San Luis and Delta-Mendota Authority's first, second, and third claims; Pixley Irrigation District's first and second claims; and Stockton East Water District's first and second claims in these consolidated cases.

DATED: 3-20-02



Oliver W. Wanger
UNITED STATES DISTRICT JUDGE